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8  
9 IN THE UNITED STATES DISTRICT COURT  
10  
11 EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

v.

14 LEOBARDO GERARDO ANAYA,

15 Defendant.

CASE NO. 2:21-CR-00055-TLN

16 STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: September 30, 2021

TIME: 9:30 a.m.

COURT: Hon. Troy L. Nunley

17 This case is set for a status conference on September 30, 2021. On May 26, 2021, this Court  
18 issued General Order 631, which reopened the courthouses in this District, but which left it to “each  
19 Judge [to] determine whether to hold proceedings . . . in person or by telephone or videoconference.”  
20 The order further authorized each Judge to “exercise his or her authority to continue [criminal] matters”  
21 and “exclud[e] time under the Speedy Trial Act.” This and previous General Orders were entered to  
22 address public health concerns related to COVID-19.

23 Although the General Orders address the district-wide health concern, the Supreme Court has  
24 emphasized that the Speedy Trial Act’s ends-of-justice provision “counteract[s] substantive  
25 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
26 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
27 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
28 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a

1 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
2 or in writing”).

3 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
4 and inexcusable—this Court’s General Orders require specific supplementation. Ends-of-justice  
5 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
6 the ends of justice served by taking such action outweigh the best interest of the public and the  
7 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
8 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
9 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
10 the defendant in a speedy trial.” *Id.*

11 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
12 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
13 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
14 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
15 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
16 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767–68; *see also United*  
17 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
18 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
19 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.  
20 In light of the societal context created by the foregoing, this Court should consider the following case-  
21 specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice  
22 exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the  
23 status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
24 continuance must be “specifically limited in time”).

25 **STIPULATION**

26 Plaintiff United States of America, by and through its counsel of record, and defendant, by and

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28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
Cal. March 18, 2020).

1 through defendant's counsel of record, hereby stipulate as follows:

2 1. By previous order, this matter was set for a status conference on September 30, 2021.

3 2. By this stipulation, defendant now moves to continue the status conference until

4 December 2, 2021, at 9:30 a.m., and to exclude time between September 30, 2021, and December 2,

5 2021, under Local Code T4.

6 3. The parties agree and stipulate, and request that the Court find the following:

7 a) The government has represented that the discovery associated with this case  
8 includes investigative reports and related documents, criminal history documents, audio files,  
9 video files, and other multimedia files totaling over 1,000 pages of documents and large amounts  
10 of data. All of this discovery has been either produced directly to counsel and/or made available  
11 for inspection and copying.

12 b) In light of this discovery, counsel for defendant desires additional time to consult  
13 with her client, to review the current charges, to conduct investigation and research related to  
14 those charges, to review and copy discovery for this matter, to inspect physical evidence seized  
15 and/or otherwise available concerning this matter, to discuss potential resolutions with her client,  
16 to consider and/or prepare pretrial motions, and to otherwise prepare for trial.

17 c) Moreover, in addition to the general public-health concerns cited by this Court's  
18 General Orders and presented by the evolving COVID-19 pandemic, which the parties  
19 incorporate herein, an ends-of-justice delay is particularly apt in this case because defense  
20 counsel is currently in the midst of a multi-defendant trial before Judge Mendez, and counsel will  
21 need time to prepare for and conduct that trial, in addition to the time needed to review discovery  
22 and otherwise investigate the facts of the above-captioned case.

23 d) Counsel for defendant believes that failure to grant the above-requested  
24 continuance would deny her the reasonable time necessary for effective preparation, taking into  
25 account the exercise of due diligence.

26 e) The government does not object to the continuance.

27 f) Based on the above-stated findings, the ends of justice served by continuing the  
28 case as requested outweigh the interest of the public and the defendant in a trial within the

1 original date prescribed by the Speedy Trial Act.

2 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
3 et seq., within which trial must commence, the time period of September 30, 2021 to December  
4 2, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local  
5 Code T4] because it results from a continuance granted by the Court at defendant's request on  
6 the basis of the Court's finding that the ends of justice served by taking such action outweigh the  
7 best interest of the public and the defendant in a speedy trial.

8 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
9 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
10 must commence.

11 IT IS SO STIPULATED.

12 Dated: September 27, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

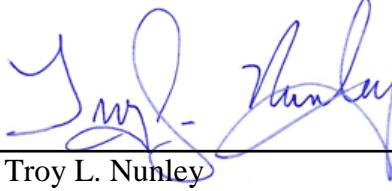
14 /s/ AARON D. PENNEKAMP  
15 AARON D. PENNEKAMP  
16 Assistant United States Attorney

17 Dated: September 27, 2021

18 /s/ CHRISTINA SINHA  
19 CHRISTINA SINHA  
20 Counsel for Defendant  
21 LEOBARDO GERARDO  
22 ANAYA

23 **FINDINGS AND ORDER**

24 IT IS SO FOUND AND ORDERED this 27<sup>th</sup> day of September, 2021.

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26 \_\_\_\_\_  
27 Troy L. Nunley  
28 United States District Judge